

ESTTA Tracking number: **ESTTA201179**Filing date: **03/27/2008**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**Petition for Cancellation**

Notice is hereby given that the following party requests to cancel indicated registration.

**Petitioner Information**

Name	Eat Right Foods Limited		
Entity	Corporation	Citizenship	New Zealand
Address	7 Kotua Place PO Box 1525 Nelson, 7040 NEW ZEALAND		

Correspondence information	Rebecca Douglas-Clifford Managing Director Eat Right Foods Limited 7 Kotua Place PO Box 1525 Nelson, 7040 NEW ZEALAND eatright@xtra.co.nz Phone:+64-274-321-515
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**Registration Subject to Cancellation**

Registration No	3395214	Registration date	03/11/2008
Registrant	Safeway Inc. 5918 Stoneridge Mall Road Pleasanton, CA 945882322 UNITED STATES		

**Goods/Services Subject to Cancellation**

Class 030. First Use: 2004/03/28 First Use In Commerce: 2004/03/28  
Cancelled goods and services in the class: Prepared foods, bakery and snack goods, namely, biscuits, cookies

**Grounds for Cancellation**

Priority and likelihood of confusion	Trademark Act section 2(d)
Other	Resembles the mark of the petitioner

Related Proceedings	Cancellation no. 92044847 on registration no. 3045314
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**Mark Cited by Petitioner as Basis for Cancellation**

U.S. Registration No.	3045314	Application Date	09/10/2004
Registration Date	01/17/2006	Foreign Priority Date	NONE
Word Mark	EATRIGHT		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 030. First use: First Use: 2001/08/01 First Use In Commerce: 2001/10/01 Organic and allergy sensitive cakes and cookies

Attachments	78481574#TMSN.jpeg ( 1 page )( bytes ) ERF USPTO Petition for Cancellation 3395214.pdf ( 4 pages )(63759 bytes )
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### **Certificate of Service**

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by Overnight Courier on this date.

Signature	/Rebecca Douglas-Clifford/
Name	Rebecca Douglas-Clifford
Date	03/27/2008

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE**  
**TRADEMARK TRIAL AND APPEAL BOARD**

Cancellation No.  
Registration No. 3395214

Eat Right Foods Limited (Petitioner)  
7 Kotua Place, PO Box 1525, Nelson, New Zealand

v.

Safeway Inc (Respondent)  
Jordan S. Weinstein  
Oblon, Spivak, McClelland, Maier & Neustadt, PC  
1940 Duke Street, Alexandria, VA 22314 United States

Honorable Commissioner for Trademarks  
PO Box 1451  
Alexandria, VA 22313-1451, USA

**PETITION FOR CANCELLATION**

Petitioner Eat Right Foods Limited located at 7 Kotua Place, Stoke, Nelson, New Zealand believes that it is or will be damaged by the continued registration of the mark identified above and hereby petitions to cancel the registration.

As grounds for this Petition, Petitioner Eat Right Foods Limited alleges:

1. Safeway Incorporated (the Respondent) is the owner of Registration No. 3395214 for the trademark EATING RIGHT for prepared foods, frozen entrees, deli, bakery and snack goods, namely, biscuits, cookies, frozen lasagne and frozen cannolli, in class 30 (US cl. 46)

2. Eat Right Foods Limited (the Petitioner) is the owner of Registration No. 3045314 for the trademark EATRIGHT (and design) for organic and allergy sensitive cakes and cookies in international class 30.
3. The Respondent's mark when used on or in connection with the goods in international class 30, creates likelihood of confusion with the Petitioners registered trademark within the meaning of section 2(d) of the Trademark Act, 15 USC 1052(d).
4. The Respondent's mark when used on or in connection with the goods in international class 30, so resembles the mark of the Petitioner, and may be likely to cause confusion, to cause mistake, or to deceive.
5. The Petitioner is the prior user of the EATRIGHT mark in connection with their respective goods.
6. The Petitioner by virtue of prior user rights of its mark EATRIGHT believes the Respondents mark should be cancelled.
7. The Petitioner is and will be damaged by the continued registration of US Registration No 3395214 in that the mark is similar to Petitioners trademark and prior rights and is being used in connection with goods identical to or closely related to the goods offered to the public by the Petitioner.

WHEREFORE, the Petitioner prays that this Petition for Cancellation be granted and that Registration No. 3395214 be cancelled.

We enclose our credit card payment for the filing fee for this Petition.

Respectfully submitted,

Eat Right Foods Limited

By: 

Rebecca Douglas-Clifford, Managing Director

Eat Right Foods Limited

7 Kotua Place, Stoke, PO Box 1525, Nelson, New Zealand

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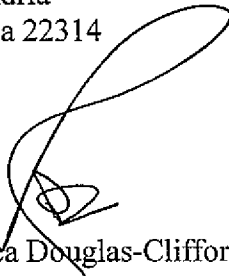
Fax: +64-547-4501; Email: [eatright@xtra.co.nz](mailto:eatright@xtra.co.nz)

Dated: March 27th, 2008

**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the foregoing Petition for Cancellation was served on the Respondent, as identified by the records of the U.S. Patent and Trademark Office, this 27<sup>th</sup> day of March, 2008, by sending same via Overnight Courier postage prepaid to:

Jordan S. Weinstein  
Oblon, Spivak, McClelland, Maier & Neustadt, PC  
1940 Duke Street  
Alexandria  
Virginia 22314  
USA



Rebecca Douglas-Clifford